



STATE BOARD OF EQUALIZATION

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Executive Director

No. 90/71

October 24, 1990

TO COUNTY ASSESSORS:

OFFICE OF ADMINISTRATIVE LAW REVIEW
OF ASSESSORS' HANDBOOK SECTION 267, WELFARE EXEMPTION

We have received several inquiries regarding the effect of a recent Office of Administrative Law (OAL) determination concluding that a portion of page 33 of Assessors' Handbook Section 267, Welfare Exemption, constitutes a regulation but is invalid and unenforceable as such because it has not been adopted pursuant to the procedures specified in the Administrative Procedures Act.

It would not be productive to set forth here the reasoning employed in the OAL determination or our disagreement with it. Suffice it to say that in Prudential Insurance Company v. City and County of San Francisco (1987) 191 Cal. App. 3d 1142, the California District Court of Appeal, First Appellate District, considered whether Assessors' Handbook Sections are instructional and advisory only or are enforceable regulations. The court concluded that they are instructional and advisory in nature, and are not regulations.

It has long been the Board's position that instructions in the form of letters to assessors, handbook sections, special topic surveys, and other similar writings are not legally enforceable. They are simply advisory notice to assessors of the Board's analysis, conclusions, and recommendations that address issues of mutual concern.

In order to avoid further misinterpretation of page 33 of Assessors' Handbook Section 267, enclosed is a revised page 33 which may be used until the next revision of the handbook is completed. To facilitate updating your existing copy of the handbook, we have reprinted page 34 on the back of the revised page 33.

If you have any questions, please contact our Exemptions Unit at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:sk
Enclosure